IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.06.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.A.No. 117 of 2007
and M.P.No.1 of 2007

1.The Deputy Commissioner of
Civil Supplies, City (North)
Chepauk, Chennai 600 005.

2.The Inspector of Police
Civil Supplies CID.,
Chennai 600 101. ... Appellants

-vs-

A. Kumar ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the order of the learned single Judge dated 14.12.2006 made in W.P.No.48655 of 2006.

W.P.No.48655 of 2006:-Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first respondent herein to release the Eicher Van bearing Registration No.TN.01/Y.7133 seized by the second respondent on 9.12.2006 near Tollgate, Karanodai Bridge, Thiruvallur District to the petitioner and pass such further or other orders.

For appellants :: Mr. Raja Kalifulla
Government Pleader

For respondent :: Mr. V. Balaskrishnan

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JUDGMENT

(DELIVERED BY P.JYOTHIMANI,J.)

The respondents in the writ petition have filed the present appeal against the order of the learned single Judge passed in W.P.No.48655 of 2006.

2. The writ petition relates to the release of Eicher Van bearing registration No.TN.01-Y-7133 seized by the second respondent/second appellant on 09.12.2006 near Tollgate, Karanodai Bridge, Thiruvallur District. Like in many other cases, wherein, in respect of the seizure effected on the vehicle for the first time, the learned Judge has passed similar order, directing the release of the vehicle on the following conditions, viz.,

> "a. The petitioner shall establish the ownership of the vehicle by producing necessary certificate before the first respondent;
> b. The petitioner shall not transfer the vehicle or encumber the same in any manner till the adjudication is over;
> c. The petitioner shall deposit a sum of Rs.20,000/- (Rupees twenty thousand only) by way of cash with the first respondent; and
> d. The petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future and shall produce the vehicle as and when required by the first respondent. "

3. The respondents in the writ petition, who have filed the appeal have specifically raised a ground that the same petitioner has filed W.P.No.14515 of 2006 in respect of the same vehicle, which was seized on 12.04.2006. The said writ petition was disposed of on 16.05.2006 on the same conditions, and one of such conditions, that is condition No.4 states that,

> "The petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future and shall produce the vehicle as and when required by the first respondent, viz., Deputy Commissioner of Civil Supplies, City (North), Chennai 5. "

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4. It is also the specific case of the appellants in the grounds of appeal that, pursuant to the earlier order of release, the petitioner/respondent herein has filed an affidavit of undertaking on 22.05.2006, stating that he will not use the vehicle for any illegal activities in future. In spite of the specific conditions imposed by this Court in its earlier order and the consequent undertaking given by the petitioner, the petitioner has again involved in transporting rice illegally and on registering compliant under Clause 6(4) of TNSC (RDCS) Order, 1982 read with Section 7(1)(a)(ii) of the E.C. Act, 1955, the second respondent has seized the vehicle on 09.12.2006, for the second time. It is the further case of the appellants that the petitioner has not only contravened the earlier undertaking given by him, but also committed the illegal activity for the second time and used the vehicle for the said purpose and therefore the respondent in the appeal is not entitled to the release of vehicle.

5. The contention raised by the learned counsel for the respondent is that in similar circumstances, that is for the second offence, another Division Bench of this Court has released the vehicle.

6. Heard the learned Government Pleader for the counsel for the appellants and also the learned counsel for the respondent.

7. A perusal of the order passed in MP.No.1 of 2006 and M.P.No.1 of 2007 in W.A.No.723 of 2006 dated 02.03.2007, shows that nowhere it is stated that the vehicle involved in that case was seized for the commission of the offence for the second time, and the contention raised by the learned counsel for the respondent deserves to be rejected.

8. It is not in dispute that the respondent in the appeal has used the same vehicle viz., Eicher Van bearing registration No.TN01-Y-7133 for the illegal activities for the second time in contravention to the earlier order and the consequent undertaking given by him. In view of the above said uncontroverted facts, the respondent is not entitle to release of the vehicle and therefore, the order of the learned single Judge dated 14.12.2006 made in W.P.No.48655 of 2006 is set aside, giving liberty to the appellants to proceed with the proceedings initiated against the respondent herein under the Essential Commodities Act and pass orders expeditiously.

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The writ appeal stands allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Deputy Commissioner of
Civil Supplies, City (North)
Chepauk, Chennai 600 005.

2. The Inspector of Police
Civil Supplies CID.,
Chennai 600 101.

+ 1 cc to Mr. V. Balakrishnan, Advocate SR No. 31591

+ 1 cc to the Government Pleader, SR No.31468

VC(CO)
SR/7.6.2007

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